

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HILLIARD JAMES BALDRIDGE,

Defendant-Appellant.

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UNPUBLISHED

June 26, 2001

No. 221837

Saginaw Circuit Court

LC No. 99-016880-FC

Before: Sawyer, P.J., and Griffin and O’Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277, and felony-firearm, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to the mandatory two years’ imprisonment for his felony-firearm conviction and was sentenced as a fourth habitual offender for his felonious assault conviction, MCL 769.12; MSA 28.1084, to seven to fifteen years’ imprisonment. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction of felonious assault and felony-firearm. We disagree. This Court reviews issues regarding the sufficiency of the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find all the necessary elements of the offense beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268; 380 NW2d 11 (1985).

The crime of felonious assault consists of an assault with a dangerous weapon done with the intent to injure or place the victim in apprehension of an immediate battery. *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999); MCL 750.82; MSA 28.277.

The evidence overwhelmingly showed that defendant intentionally fired a firearm at the victim with the intent of injuring him, if not killing him – he brandished a firearm and threatened to “pop” – or shoot – his victim, then shot the victim in his abdomen. The intentional firing of a firearm at someone is an assault. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Not only did defendant brandish a firearm, threaten to shoot the victim, and then shoot the victim in his abdomen, there was sufficient evidence that defendant fired a second shot at the victim that grazed his head. This evidence was sufficient to support defendant’s felonious assault conviction.

Moreover, there was sufficient evidence to convict defendant of felony-firearm because he assaulted his victim with a gun intending at the very least to inflict injury. The elements of felony-firearm were met because defendant possessed a firearm during the commission of a felonious assault, MCL 750.82; MSA 28.277. *Avant, supra* at 506-507; MCL 750.227b; MSA 28.424(2).

Defendant next argues that he is entitled to resentencing because the trial court imposed a disproportionate sentence. We disagree. This Court reviews sentences imposed on habitual offenders for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997); *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995).

Under the principle of proportionality, this Court must determine if a defendant's sentence is proportionate to the seriousness of the circumstances surrounding the offense and the specific offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). The sentencing guidelines do not apply to habitual offenders. *Hansford, supra* at 323-324. A trial court does not abuse its discretion by imposing a sentence on an habitual offender that is within the statutory limits where his underlying felony, and previous felonies, show that he cannot conform his conduct to the law. *Hansford, supra* at 326.

Pursuant to MCL 769.12(1)(b); MSA 28.1084(1)(b), defendant could have been sentenced to a maximum sentence of fifteen years' imprisonment as a fourth habitual offender. Consequently, his sentence of seven to fifteen years' imprisonment is within the statutory limits and is, therefore, proportionate to his criminal record and the circumstances of this case.

Affirmed.

/s/ David H. Sawyer  
/s/ Richard Allen Griffin  
/s/ Peter D. O'Connell